

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

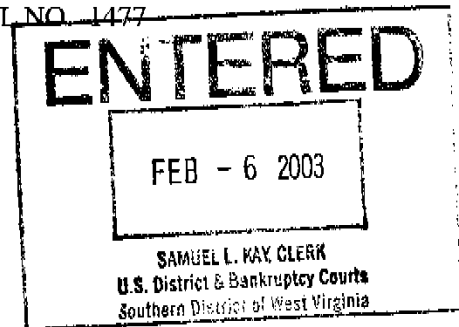
CHARLESTON DIVISION

IN RE: SERZONE  
PRODUCTS LIABILITY LITIGATION

MDL NO. 1477

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THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER #4**



Pending is defendant Bristol-Myers Squibb's motion to amend Pretrial Order # 2 [Docket 43]. For the following reasons, the motion is **GRANTED**.

The defendant moves the court to amend section VI(E) of Pretrial Order #2 as it relates to the Plaintiffs' Fact Sheet and Authorizations covered by Discovery Order #5. As reflected in Discovery Order #5, the parties have agreed on a Plaintiffs' Fact Sheet, which must be completed by each plaintiff in this multidistrict litigation. In this Fact Sheet, each plaintiff must disclose, in considerable detail, much of his or her medical history. In addition, also pursuant to Discovery Order #5, the parties have agreed on forms by which plaintiffs will authorize the release of other personal information: an Authorization for Release of Medical Records, an Authorization for Release of Employment and Unemployment Records, an Authorization for Release of Education Records, and an Authorization for Release of Workers' Compensation, Social Security and other Disability Records. The Plaintiffs' Fact Sheet and these Authorizations are referred to collectively

as the “Authorizations,” and the records produced pursuant to the Authorizations are referred to collectively as “Collected Records.”

Discovery Order #5 provides that “[p]ursuant to Pretrial Order No. 2, all records regarding any plaintiff collected by [COMPANY NAME] through use of the Authorizations [‘Collected Records’] are hereby designated ‘CONFIDENTIAL.’” (Discovery Order #5, ¶ 10 (brackets in original).) The records are to be stamped confidential and “[d]isclosure of Collected Records shall be governed by the provisions of Pretrial Order No. 2.” *Id.* Pretrial Order #2 imposes significant restrictions on the use and disclosure of records designated confidential. Bristol-Myers Squibb moves to amend the confidentiality provisions of Pretrial Order #2 as they apply to the Collected Records. The plaintiffs have not filed a response in opposition.

Bristol-Myers Squibb has identified a number of specific contexts in which it requests permission to disclose Collected Records. First, it moves for permission to disclose Collected Records to (a) individuals responsible for compliance with regulatory obligations imposed by governmental agencies, (b) the Food and Drug Administration, and (c) other governmental regulatory agencies that require Bristol-Myers to report information that might be contained in the Collected Records. Disclosure to these groups, the defendant argues, is necessary to meet its regulatory obligations. The court agrees. Second, the defendant moves for permission to disclose Collected Records to representatives of its insurance carriers. According to Bristol-Myers Squibb, it must permit representatives of its insurance carriers to review and/or audit its litigation files on occasion in order to maintain its insurance coverage. The court finds that this request is also reasonable. Third, the defendant moves for permission to disclose Collected Records to plaintiffs’ treating physicians or health care providers. This is necessary, the defendant argues, for the plaintiffs’ health

care providers to render informed judgments about their patients' health care issues in this matter. The court agrees. Fourth, the defendant moves for permission to disclose, for the purposes of depositions and pleadings filed with the court, any Collected Records that explicitly reference (a) Serzone use, (b) any condition or injury that a plaintiff claims is caused by Serzone use, or (c) any condition, drug use, exposure or potential cause of a condition that a plaintiff alleges was caused by Serzone use. The defendant argues that disclosure of these documents in depositions and pleadings is necessary to properly defend against the plaintiffs' claims. The court agrees.

Accordingly, the court **ORDERS** that Pretrial Order #2 is amended to permit:

1. The disclosure of Collected Records, to the extent necessary to satisfy Bristol-Myers Squibb's regulatory reporting obligations, to (a) individuals responsible for compliance with governmental regulatory obligations, (b) the Food and Drug Administration, and (c) other governmental regulatory agencies that require Bristol-Myers to report matters contained in the Collected Records. Provided, that Collected Records disclosed to individuals responsible for regulatory compliance be used by them only for that purpose, except as otherwise permitted by Pretrial Order #2.

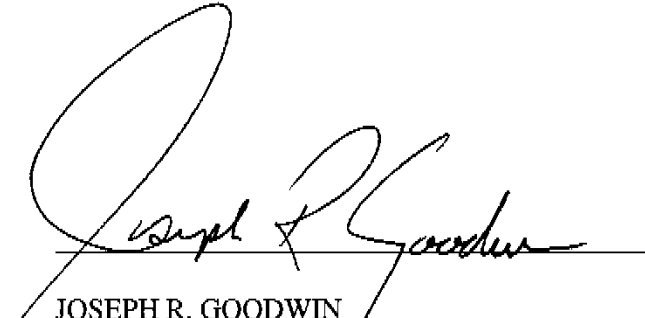
2. The disclosure of Collected Records, to the extent necessary to maintain Bristol-Myers Squibb's insurance coverage, to representatives of Bristol-Myers Squibb's insurance carriers. Provided, that Collected Records disclosed to representatives of Bristol-Myers Squibb's insurance carriers shall be used by them only for the purpose of providing insurance coverage to Bristol-Myers Squibb, and shall not be disclosed to any other party, except as otherwise permitted by Pretrial Order #2.

3. The disclosure of Collected Records to plaintiffs' treating physicians or health care providers, to the extent necessary to permit them to provide informed opinion and testimony regarding their patient-plaintiff's health care issues related to this matter. Provided, that an individual patient-plaintiff's Collected Records may be disclosed only to his or her own treating physicians and health care providers, and not to other plaintiffs' physicians or health care providers, except as otherwise permitted by Pretrial Order #2.

4. The disclosure of Collected Records, in depositions taken and pleadings filed in this matter, that explicitly reference (a) Serzone use, (b) any condition or injury that a plaintiff claims is caused by Serzone use, or (c) any condition, drug use, exposure or potential cause of a condition that a plaintiff alleges was caused by Serzone use.

The court **DIRECTS** the Clerk to send a copy of this Order to Defendant's Liaison Counsel and Plaintiffs' Liaison Counsel.

ENTER: February 6, 2003



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE